

# **EXHIBIT C**

Wade Ackerman/Los  
Angeles/Kirkland-Ellis  
03/04/2008 05:43 PM

To Neal San Diego/Los Angeles/Kirkland-Ellis@K&E  
cc  
bcc  
Subject Fw: Berry v. Deutsche Bank Discovery

— Forwarded by Michael Baumann/Los Angeles/Kirkland-Ellis on 02/29/2008 06:41 AM —



"Tim Hogan"  
<tjh@timhogan.com>  
02/28/2008 07:57 PM

To "Michael Baumann" <mbaumann@kirkland.com>  
cc  
Subject RE: Berry v. Deutsche Bank Discovery

Like usual you use your own self serving emails to use for an exhibit to show the court. The K&E special. My original response said

Mike:

I have gone through your motion and the support and my second amended complaint comparing your support to my burden and I must admit I don't see

how you win much less how you could claim a basis to file under rule 11.

Perhaps if you could detail the facts or legal issues that you believe give your client a basis under Rule 11, I could adress that and respond in

a constructive manner to your request. I am presenly away from my computer. If your earlier email continues to evidence your basis then you

might just respond by resending it with a note to see same and I will respond.

You don't deny that you obtained Mr. Ichida's cooperation to give what would be considered privileged if true. That should be summary judgment for Berry. That had nothing to do with his failure to advise his client of matters related to his case and the other violations. You admit to violating your duty as an attorney by using the Ichida affidavit as a publicity stunt. I can prove he was communicating to Wynne and that violates his duty too and Wynne should have known it. That communication predated any disciplinary complaint. We have an eye witness your alibi witnesses notwithstanding. I have the proof I need to meet your motion as I said in the first place. I may need to apply for 56(f) for the Lynch Ichida bank records, Brawley material and to examine the detectives that confirmed that you were involved and seek some phone records, but I will make that decision soon. Don't take anything in this email as an admission to limit to the evidence I have to defeat your motion.

Tim

---

**Timothy J. Hogan**

Attorney at Law  
1050 Bishop Street, No. 433  
Honolulu, Hawaii 96813  
Tel (808) 382-3698  
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Email [tjh@timhogan.com](mailto:tjh@timhogan.com)  
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**From:** Michael Baumann [<mailto:mbaumann@kirkland.com>]  
**Sent:** Thursday, February 28, 2008 5:18 PM  
**To:** Tim Hogan  
**Subject:** RE: Berry v. Deutsche Bank Discovery

Are you quoting from Mr. Ichida's affidavit when you put single quotation marks around "our case is without merit"? My recollection of the affidavit is that with respect to the allegations against Kors and the PCT, Mr. Ichida responded to your e mail inquiries by advising you that the accusations you and Mr. Berry were levelling against him and your former firm were untrue. What privilege do you think allows Mr. Berry to make false accusations of conversion or breach of fiduciary duty and bars the accused from responding?

As to your question "What other claim did you say we couldn't prove?" the answer is all of the claims made against Kors, PCT and the Lenders to start. Your e mail is silent on the false allegation that I pointed out Berry to process servers. Your e mail is silent on the complete absence of merit to the allegation of a secret deal, a payment to Lynch Ichida, or the purchase of a lien. Other than your effort to construct a disciplinary violation, which is unconvincing given that the question is whether you followed your obligations under the rules before making these claims, you have not been able to rationalize your apparent decision to plow ahead.

Tim, I am finished trying to convince you and Mr. Berry to withdraw false claims. We will serve you with a Rule 11 motion and reply to whatever opposition you muster to the summary judgment motion.

"Tim Hogan" <[tjh@timhogan.com](mailto:tjh@timhogan.com)>

02/28/2008 05:43 PM

To: "Michael Baumann" <[mbaumann@kirkland.com](mailto:mbaumann@kirkland.com)>  
cc

Subject: RE: Berry v. Deutsche Bank Discovery

It's simple. An attorney stating 'our case is without merit' whether true or in this case false, is making a statement regarding the merits of the case that is privileged.

I informed you that Mr. Berry never waived the privilege thus the act of his renegade attorney who you encouraged to commit the breach of duty results in no waiver. I informed you and asked you to withdraw it and you on Kors' behalf refused thus both independently violating the DRs. That is both encouraging and abetting aiding and abetting a breach of the DRs. What other claim did you say we couldn't prove?

---

Timothy J. Hogan  
Sent via Windows Mobile

-----Original Message-----

From: Michael Baumann <mbaumann@kirkland.com>  
Sent: Thursday, February 28, 2008 3:32 PM  
To: Tim Hogan <tjh@timhogan.com>  
Subject: RE: Berry v. Deutsche Bank Discovery

I am not familiar with the affidavit fairy, but I do know I haven't talked to Wes Ichida and barely know the man. Your second paragraph is a bit cryptic--are you referring to the Kors affidavit or to Kors and PCT offering the affidavit of Wes Ichida? Either way, it is not at all clear why you think these violate some ethical duty of Mr. Ichida's. I guess the bottom line on this is you and Mr. Berry wish to proceed with the complaint and its allegations about Kors and the PCT as written.

"Tim Hogan" <tjh@timhogan.com>  
02/28/2008 05:08 PM

To  
"Michael Baumann" <mbaumann@kirkland.com>  
cc

Subject  
RE: Berry v. Deutsche Bank Discovery

I guess Wes' affidavit that contained false, but if true, clearly privileged facts that, were also coincidentally in Rick Wynne's earlier letter, came from the affidavit fairy. Your answer is pretty much what I expected.

I also take it that Kors will continue to offer the affidavit he obtained in clear, and now knowing, violation of Wes' ethical obligations.

---

Timothy J. Hogan  
Sent via Windows Mobile

-----Original Message-----

From: Michael Baumann <mbaumann@kirkland.com>

Sent: Thursday, February 28, 2008 2:57 PM  
To: Tim Hogan <tjh@timhogan.com>  
Subject: RE: Berry v. Deutsche Bank Discovery

Tim:

I think the only time I have ever talked to Wes Ichida is when you were there in Hawaii for the trial. I don't see why you think I can get him to

agree to anything. C'mon, let's end this part of the fight before it spins even more out of control.

Mike

"Tim Hogan" <tjh@timhogan.com>  
02/28/2008 04:43 PM

To  
"Michael Baumann" <mbaumann@kirkland.com>  
cc

Subject  
RE: Berry v. Deutsche Bank Discovery

Mike:

Can you get Wes to agree to let me view the accounts at the bank? That would go a long way to resolving this.

---

Timothy J. Hogan  
Sent via Windows Mobile

-----Original Message-----  
From: Michael Baumann <mbaumann@kirkland.com>  
Sent: Thursday, February 28, 2008 1:51 PM  
To: Tim Hogan <tjh@timhogan.com>  
Subject: RE: Berry v. Deutsche Bank Discovery

Tim:

If you are referring to our earlier e mail correspondence in which I asked

for the basis for the allegations, I can forward that if you like. The facts are that allegations at the heart of your claims against the PCT and

Kors are untrue. My point, I think, is not very subtle. There are now affidavits confirming under oath the facts that I was not in Florida, that

no payments were made by Kors and the PCT to the Lynch Ichida firm, that

no attorney lien was bought or sold, no process encouraged or served at the behest of Kors and the PCT in the Berry divorce, no money received from Lynch Ichida, no settlement secret or otherwise of Berry claims with Lynch Ichida and no unrejected license agreement. Kors and the PCT did not attempt to buy or agree to buy Lynch Ichida's unperfected attorney lien and were not present to ask and did not direct questions to be asked of Berry in his deposition. What is the point of continuing this?

"Tim Hogan" <tjh@timhogan.com>  
02/28/2008 03:29 PM

To  
"Michael Baumann" <mbaumann@kirkland.com>  
cc

Subject  
RE: Berry v. Deutsche Bank Discovery

Mike:

I have gone through your motion and the support and my second amended complaint comparing your support to my burden and I must admit I don't see

how you win much less how you could claim a basis to file under rule 11.

Perhaps if you could detail the facts or legal issues that you believe give your client a basis under Rule 11, I could address that and respond in

a constructive manner to your request. I am presenly away from my computer. If your earlier email continues to evidence your basis then you

might just respond by resending it with a note to see same and I will respond.

Timothy J. Hogan  
Sent via Windows Mobile

-----Original Message-----

From: Michael Baumann <mbaumann@kirkland.com>  
Sent: Thursday, February 28, 2008 12:54 PM  
To: Tim Hogan <tjh@timhogan.com>  
Subject: RE: Berry v. Deutsche Bank Discovery

Tim:

Now that you have had an opportunity to consider our summary judgment papers, I ask you to reconsider continuing your suit against the PCT and Mr. Kors. If you are going to drop these claims, now is the time to do it

before the PCT and Mr. Kors incur the expense of drafting a sanctions motion and before Mr. Berry and you incur the costs of drafting an opposition to our summary judgment motion. As you said at the hearing, your primary focus has never been the PCT and Mr. Kors. Let me know if you will dismiss the claims against them so we don't have to draft and serve a Rule 11 motion.

Mike

"Tim Hogan" <tjh@timhogan.com>  
02/27/2008 05:21 PM

To

"Wesley W. Ichida" <wes@loio.com>, "Robert PENCHINA"  
<RPENCHINA@lskslaw.com>, "Michael Baumann" <mbaumann@kirkland.com>,  
"Christopher Beall" <CBeall@lskslaw.com>, "Erin Brady"  
<ebrady@kirkland.com>, "Cheryl R. Brawley" <attorney4@hawaiiantel.net>,  
"Andrew P. DeNatale" <adenatale@whitecase.com>, "Christopher M. Mason"  
<cmason@nixonpeabody.com>, "Jonathan Moskin" <jmoskin@ny.whitecase.com>,  
"Richard Wynne" <rwynne@kirkland.com>

cc

"Maile M. Hirota" <maile@loio.com>, "Steven J. Kim" <sjk@loio.com>,  
"William F. Thompson III" <wft@loio.com>, "Paul A. Lynch" <pal@loio.com>,  
"Lex R. Smith" <lsmith@kslaw.com>

Subject

RE: Berry v. Deutsche Bank Discovery

Dear Counsel:

Under a separate cover, I have communicated with Mr. Ichida regarding his email and certain matters that were included in the PCT-Kors Motion for Summary Judgment. I am hoping that he will act today to correct this matter. As to remainder of Mr. Ichida's letter, suffice it to say that his representations are denied.

Because he has not yet withdrawn from one of the Berry matters, I request that counsel include me in any further discussion with Mr. Ichida or members of his firm.

Tim Hogan

---

Timothy J. Hogan  
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-----Original Message-----

From: Wesley W. Ichida [<mailto:wes@loio.com>]  
Sent: Wednesday, February 27, 2008 1:16 PM  
To: Tim Hogan; Robert Penchina; Michael Baumann; Christopher Beall; Erin Brady; Cheryl R. Brawley; Andrew P. DeNatale; Christopher M. Mason; Jonathan Moskin; Richard Wynne  
Cc: Maile M. Hirota; Steven J. Kim; William F. Thompson III; Paul A. Lynch; Lex R. Smith  
Subject: RE: Berry v. Deutsche Bank Discovery

Dear Mr. Hogan: I have no idea what is being circulated concerning a letter to Ms Brawley which you have not attached. Nevertheless, I wanted to inform you and all other counsel involved that the Lynch Ichida Firm, whose bank accounts you are proposing to subpoena strenuously objects to the subpoena and will definitely move to quash it if it is ever served.

By e-mail dated December 17, 2007 at 4:36 p.m., I informed you that your allegations that this Firm assigned or sold its attorneys' fees lien on Berry's recovery to Lex Smith's client or connected parties were not accurate. In addition, as you are aware, this Firm has not yet perfected its lien such that it could be assigned. In spite of that, you amended Mr. Berry's Complaint to allege the exact matters that you were told were not true. I am sure that Mr. Lex Smith would also tell you the same thing if he has not already done so: that there was never any offer, or any agreement, and no money or other consideration was ever received by this Firm from Lex Smith, or anyone else for this Firm's attorney's lien pertaining to Mr. Berry. Moreover, this Firm has already provided you and Mr. Berry with all of the accounting of his accounts with this Firm and in our Clients' Trust account, as you had requested. There is nothing more we can do.

Now you are threatening to subpoena the Firm's bank accounts with CPB. All of those records are highly confidential and include information which is confidential as they pertain to our other clients. Your subpoena is overly broad and includes those confidential matters which do not concern Mr. Berry in any way. Compliance with your subpoena may cause us to breach our other clients' confidentiality. Except for your imagination, you have absolutely nothing to support your allegations in any way.

You are on a totally unsupportable fishing expedition. We demand that you not go forward with the Subpoena. If you do, we will not only move to quash as set forth above, but we will also seek sanctions against you and Mr. Berry.

Very Truly Yours,

Wes Ichida

-----Original Message-----

From: Tim Hogan [<mailto:tjh@timhogan.com>]  
Sent: Wednesday, February 27, 2008 12:10 PM  
To: Robert Penchina; Michael Baumann; Christopher Beall; Erin Brady; Cheryl R. Brawley; Andrew P. DeNatale; Wesley W. Ichida; Christopher M.



Mason; Jonathan Moskin; Richard Wynne  
Subject: RE: Berry v. Deutsche Bank Discovery

Mr. PENCHINA:

Thank you for your response. I copied Ms. Brawley on the email. I will fax a letter to her, with copy to all counsel tomorrow after 5:00 p.m. EST barring any further objection or comment from other counsel.

Regards,

Tim Hogan

---

Timothy J. Hogan  
Attorney at Law  
1050 Bishop Street, No. 433  
Honolulu, Hawaii 96813  
Tel (808) 382-3698  
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www [timhogan.com](http://timhogan.com)

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-----Original Message-----

From: Robert PENCHINA [<mailto:RPENCHINA@lskslaw.com>]  
Sent: Wednesday, February 27, 2008 9:36 AM  
To: Tim Hogan; Michael Baumann; Christopher Beall; Erin Brady; Cheryl R. Brawley; Andrew P. DeNatale; Wesley Ichida; Christopher M. Mason; Jonathan Moskin; Richard Wynne  
Subject: RE: Berry v. Deutsche Bank Discovery

Mr. Hogan-

Your proposal is acceptable to me provided that you circulate to all on this email a copy of your communication with Ms. Brawley's firm. I am speaking only on behalf of GECC, and do not know whether the proposal is acceptable to any of the other defendants.  
Thank you for your cooperation on this issue.

-----Original Message-----

From: Tim Hogan [<mailto:tjh@timhogan.com>]  
Sent: Wednesday, February 27, 2008 2:26 PM  
To: Michael Baumann; Christopher Beall; Erin Brady; Cheryl R. Brawley; Andrew P. DeNatale; Wesley Ichida; Christopher M. Mason; Jonathan Moskin; Richard Wynne; Robert PENCHINA  
Subject: Berry v. Deutsche Bank Discovery

Dear Counsel.

I have gone back through my notes regarding our conferences with Judge Pauley related to Mr PENCHINA's objection to my discovery. Rather than risk proceeding in face of the objection, and deferring to Mr PENCHINA I will refrain from serving the Central Pacific Bank Subpoena and request that Ms. Brawley's firm delay compliance with my Subpoena until the matter is resolved. Can counsel please advise me if this would be acceptable. I would prefer to not have to withdraw the Brawley's & Assoc. subpoena but will if requested.

Thank you,

Tim Hogan

---

Timothy J. Hogan  
Sent via Windows Mobile

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